

City of Yonkers – RFP 255 – Attachment A

LAND DISPOSITION AGREEMENT

between

CITY OF YONKERS
as Seller

and

[Insert Developer's Name]
as Purchaser

Dated as of
[Insert Date]

City of Yonkers
Section 1, Block 186, Lot 132

PLEASE RECORD AND RETURN TO:

City of Yonkers
Corporation Counsel
City Hall – 3rd Floor
Yonkers, N. Y. 10701

THIS AGREEMENT, dated as of _____, 2012 is between the City of Yonkers, a municipal corporation having an office at 40 South Broadway, Yonkers, New York 10701 (the “SELLER”), and [insert entity name], a _____ organized under the laws of _____, having an office at _____, or any entity formed by them for the purposes contained in this Agreement (the “PURCHASER”).

WHEREAS, the City of Yonkers is the owner of the Subject Property located at 70 Jackson Street, Yonkers, New York 10701, also known as the Yonkers Public School 19 (PS 19) Parcel; and

WHEREAS, the City of Yonkers has deemed the Subject Property to be surplus property and is desirous of conveying the property to a qualified developer in the interest of economic revitalization of the City of Yonkers; and

WHEREAS, by Resolution No. ____2013 adopted by the City Council on _____2013, the terms and provisions of this Agreement were approved and disposition of the Subject Property to PURCHASER and the development lease contemplated herein was authorized and approved.

WHEREAS, the Subject Property is to be conveyed to the PURCHASER by the City, as SELLER, for the purpose of constructing or causing to be constructed a building or buildings all in compliance with the Charter and Code of the City of Yonkers, the Zoning Ordinance, and any other applicable laws, rules and regulations,

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements herein contained, and other good and valuable consideration, the mutual receipt and legal sufficiency of which is hereby acknowledged, the SELLER and the PURCHASER hereby covenant and agree as follows:

ARTICLE I ***DEFINITIONS***

As used herein, the following terms shall have the following meanings:

“Affiliate” or “Affiliates” means (a) in the case of any Person, a Person which, directly or indirectly, controls, is controlled by or is under common control with such Person, or (b) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate. For purposes of this definition the phrase “member of the immediate family” includes a spouse; a brother or sister of the whole or half blood of such individual or his spouse; a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing or a trust for the benefit of any of the foregoing. For purposes of the foregoing definition, “control” (including “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or

cause the direction of the management policies of the entity in question, whether through the ownership of voting securities, partnership interests, or by agreement or otherwise.

“Agreement” means this Land Disposition Agreement and all exhibits hereto and all amendments, modifications and supplements hereof.

“Architect” means _____, having its principal office located at _____ or a registered architect or architectural firm selected by PURCHASER and reasonably approved by SELLER to design the Improvements.

“City” means The City of Yonkers, New York, a municipal corporation.

“Closing” has the meaning provided in Section 4.1 hereof.

“Closing Date” means the date on which the Closing occurs.

“Construction Agreements” means the construction agreements or contracts, together with all amendments, modifications and supplements thereof, for the construction of the Improvements, including, without limitation, general contractor agreements and agreements or contracts for project management, construction management, architectural services, and subcontracts.

“Construction Plans” has the meaning provided in Section 5.5 hereof.

“Event of Default” has the meaning provided in Section 12.1 hereof with respect to PURCHASER and in Section 12.4 with respect to SELLER.

“Final Completion” with respect to all of the components of the Improvements, means that all “punchlist” items (but not including any tenant improvements) identified at Substantial Completion have been fully completed and the Architect for such component has determined that all work has been completed in full compliance with the Plans for such component.

“Financing Entity Program” shall have the meaning set forth in Section 13.2.2 of this Agreement.

“Governmental Agency(ies)” means the United States, the State of New York (the “State”), the Agency, the City or any political subdivision of any thereof, and any agency, department, office, commission, board, court or instrumentality of any thereof.

“Governmental Approvals” means approvals from Governmental Agencies as more particularly described in Section 7.1 hereof.

“Improvements” has the meaning set forth in Section 2.1 hereof.

“Institutional Lender” means (a) a savings bank, a savings and loan association, a commercial bank, trust company, an insurance company (whether acting individually or in a fiduciary capacity) G.E. Capital, GMAC, Ford Motor Corp. or comparable credit corporation organized and existing under the laws of the United States or any State, (b) a religious, educational or eleemosynary institution, an employee's welfare, benefit, pension or retirement fund, (c) a real estate investment trust, or investment bank, (d) the Yonkers Industrial Development Agency or any other Governmental or quasi-Governmental Agency or entity, (e) established hedge fund having experience in financing construction projects of similar size and scope as the Improvements, or (f) [INSERT APPROVED INSTITUTIONAL LENDER IF AVAILABLE] , or any combination of two or more of the foregoing types of entities, provided, that in order to qualify as an Institutional Lender for the purposes of this Agreement, the entity (1) must be subject, or submit itself, to the jurisdiction of the courts of New York State in any actions arising out of this Agreement, and (2) respecting only those entities set forth in clause (a) above, are subject to the supervision of the Comptroller of the Currency of the United States or the Insurance Department or Banking Department of the State of New York.

“Lease” shall mean the development lease described in Section 2.2 hereof.

“Yonkers Public School 19 (PS 19)” means the parcel(s) of property situated on approximately .92 acres on 70 Jackson Street in Yonkers, comprised of the Subject Property as more particularly described by metes and bounds in **Schedule “A”** attached to this Agreement and made a part hereof.

“Manager”, if any, means a person designated in the organizational documents of PURCHASER as a Manager of PURCHASER.

“Outside Date” has the meaning provided in Section 4.2 hereof.

“Permitted Exceptions” means the matters so designated in Article XIV of this Agreement.

“Person” means an individual, corporation, partnership, limited partnership, joint venture, limited liability company, limited liability partnership, estate, trust or unincorporated association, any Federal, State, County or municipal government or any bureau, department, or agency thereof, any political subdivision, any fiduciary acting in such capacity on behalf of any of the foregoing, or any other legal or business entity.

“Plans” means any of the schematics, design development documents or any other schematic plan, design development document, plan or specification delivered by either PURCHASER or SELLER under this Agreement.

“Preliminary Development Plans” has the meaning provided in Section 5.2 hereof, and consist of the drawings, specifications and construction schedule listed and referred to in **Exhibit C** attached hereto and made a part hereof.

“Requirements” means any and all laws, rules, regulations, orders, ordinances, variances, statutes, codes, executive orders, permits, approvals (and conditions of permits and approvals) and requirements of all Governmental Agencies applicable to the Subject Property and the Improvements, including, without limitation, all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations.

“SEORA” mean the State Environmental Quality Review Act (Title 8 of the Environmental Conservation Law of the State of New York) and the regulations issued thereunder by the New York State Commissioner of Environmental Conservation.

“Subject Property” means the parcel(s) of property owned by the SELLER and intended to be leased to PURCHASER with an option to purchase under this Agreement which are intended to be part of the Yonkers Public School 19 (PS 19) Parcel and is located at Section 1, Block 186, Lot 132 of the Tax Map of the City of Yonkers.

“Substantial Completion” of or “Substantially Complete”, with respect to any improvement to be constructed as contemplated in this Agreement, means that the Department of Housing and Buildings of the City (the “Building Department”) has issued a temporary certificate of occupancy, and a “punchlist” of the work necessary to achieve Final Completion has been created by the Architect and accepted by the Building Department. In general, any remaining work shall be such as will not materially interfere with the proposed use of such component and can be accomplished in no more than one hundred twenty (120) consecutive days following Substantial Completion of such component.

“Substantial Completion Date” shall mean the date as set forth in Section 6.1 hereof.

“Title Objections” has the meaning set forth in Section 14.2 hereof.

“Unavoidable Delays” means delays incurred by SELLER or PURCHASER (as the case may be, the “Delayed Party”) due to strikes, lockouts, work stoppages, labor jurisdictional disputes, orders by Governmental Agencies that affect the progress of any work or process hereunder by more than 30 days, court injunctions or other court orders, acts of God, inability to obtain labor or materials, governmental preemptions or restrictions, enemy action, riot or other civil commotion, fire, casualty or other causes beyond the reasonable control of the Delayed Party, or if the Delayed Party is the PURCHASER, or an Affiliate of PURCHASER, the breach, default or delay by SELLER in the payment or performance of its obligations under this Agreement or any agreement referred to in this Agreement; in each case provided the Delayed Party shall have notified the other party to this Agreement not later than thirty (30) days after the Delayed Party knows or should have known of the occurrence of same and if such notice is given after the expiration of such thirty (30) day period, then the period of Unavoidable Delay shall not be deemed to have commenced until the Delayed Party shall have notified the other party of the occurrence of same.

“_____” shall mean the _____, a _____, and serving as Agent to the SELLER in connection with this Agreement and the proposed Lease.

“Zoning Ordinance” means the Zoning Ordinance of the City of Yonkers.

ARTICLE II

THE YONKERS PUBLIC SCHOOL 19 (PS 19) PARCEL PROJECT and DEVELOPMENT LEASE

The Yonkers Public School 19 (PS19) Parcel project shall consist of the following elements:

Section 2.1 Improvements. The Improvements shall include the following principal elements which are more particularly described in PURCHASER’S Conceptual Development Plan (as defined in Section 5.1 hereof) and is attached hereto as **Exhibit A**: (A) Restoration or demolition of existing structures in the Yonkers Public School 19 (PS 19) Parcel; (B) the construction and equipping of an approximately _____ square foot, _____ foot tall, ___-story building consisting principally of (i) approximately _____ square feet of commercial retail space on the _____ floor fronting _____ Street, (ii) approximately _____ square feet to accommodate ____+ parking spaces on the _____ floor, and (iii) related sitework and sidewalk improvements, including structural, elevator, mechanical and utility work necessary to serve such improvements (i), (ii), and (iii) being collectively referred to as the "Improvements"); and (C) the widening of all or a portion of _____ [to be possibly added at the City Engineer’s discretion] and related infrastructure improvements to provide for improved ingress and egress to and from the Improvements which shall be dedicated to the City, as more particularly described by metes and bounds in Schedule B attached hereto and made a part hereof (the “Dedicated Improvements”). The foregoing Improvements and Dedicated Improvements shall be constructed in conformity with the Preliminary Development Plans, as the same may be modified in accordance with this Agreement. Nothing contained in this Section 2.1 shall be deemed to relieve PURCHASER from compliance with any requirements or restrictions of the Zoning Ordinance applicable to the Yonkers Public School 19 (PS 19) Parcel, subject to variances that may hereafter be approved by the Zoning Board of Appeals of the City, or any other applicable Requirements.

Section 2.2 Development Lease and Lease Date. On or before _____, 201_ (the “Lease Date”), SELLER shall enter into a development lease agreement (the “Lease”) with PURCHASER for the Yonkers Public School 19 (PS 19) Parcel. The Lease will contain the following terms and conditions with an option to purchase in accordance with Section 3.1 hereof:

(a) Term: TBD

(b) Annual Rental: \$_____ TBD.

(c) Net Lease: PURCHASER shall be responsible for all maintenance and repairs of the Yonkers Public School 19 (PS 19) Parcel and operating expenses, including but not limited to real estate taxes, water, gas, electric and sewer charges and utilities; and any other state, county or municipal charges, and any special assessments.

(d) Insurance: PURCHASER shall obtain insurance for all construction activities and post-construction operations, including but not limited to commercial liability insurance, on terms acceptable to SELLER, naming SELLER as an additional insured. The amounts of such insurance shall be determined by the total development costs for the Yonkers Public School 19 (PS 19) Parcel and the amounts required by the Institutional Lender.

(e) Urban Renewal: Not Applicable

(f) Leasehold Mortgage(s): PURCHASER may, on one or more occasions, mortgage its interest in the Yonkers Public School 19 (PS 19) Parcel and grant a security interest in personal property situated thereon, provided: (i) the holder of such mortgage shall be an Institutional Lender, and (ii) no mortgage shall extend to, affect, or be a lien or encumbrance upon, the estate and interest of SELLER in the Yonkers Public School 19 (PS 19) Parcel or any part thereof. PURCHASER may, in connection with the execution and delivery of a mortgage, collaterally assign the Lease to the Institutional Lender, if required, as additional security for such financing, provided that the execution and delivery of a mortgage will not give nor shall be deemed to give a lender any greater rights against SELLER than those granted to PURCHASER under the Lease.

(g) Subleases. PURCHASER shall be permitted to enter into subleases for rental units and commercial space in the project prior to commencement of construction provided that such subleases do not become effective until a temporary certificate of occupancy has been issued for such space. Commercial subleases will require prior written approval of SELLER.

Section 2.3 Conditions for Execution of this Agreement. Upon the execution and delivery of this Agreement, and in contemplation of SELLER entering into the Lease with PURCHASER for the Yonkers Public School 19 (PS 19) Parcel, PURCHASER shall

(a) Make the Deposit described in Section 3.3 hereof;

(b) Deliver to SELLER a certificate of good standing of PURCHASER and a copy the Articles of Organization of PURCHASER, and a certificate of good standing and a copy of the certificate of incorporation of any corporate member of PURCHASER, together with evidence reasonably satisfactory to SELLER that PURCHASER and any member or Manager of PURCHASER that is not a natural person is qualified to do business in the State of New York;

(c) Deliver to SELLER the written opinion of counsel to PURCHASER, in form reasonably satisfactory to SELLER (assuming that all signatures are genuine, and further assuming that all documents presented to such counsel as copies conform with the originals), stating (1) that PURCHASER is a _____ duly organized and validly existing under the

laws of the State of New York; (2) PURCHASER has the power to enter into the transactions contemplated by this Agreement; (3) all actions by PURCHASER required to be authorized in the transaction contemplated by this Agreement have been duly authorized; (4) this Agreement and all documents required to effectuate the transactions contemplated hereby which are to be executed by PURCHASER have been duly executed and delivered by PURCHASER, and constitute binding obligations of PURCHASER, enforceable in accordance with their terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganizations, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitation on the enforceability of specific remedies;

(d) Deliver to SELLER any resolutions or other formal determinations or consents of the managers and members of PURCHASER that are reasonably deemed necessary by SELLER in order to authorize PURCHASER to consummate the transactions contemplated herein, such documents to be in form and substance, and certified on behalf of any pertinent entity that is not a natural person, as SELLER shall reasonably require; and

(e) Deliver any other documents required by this Agreement to be delivered to SELLER in contemplation of entering into the Lease.

Section 2.4. Environmental Costs.

2.4.1 , PURCHASER shall be responsible for all costs in connection with any environmental pollution or hazardous substances on the Yonkers Public School 19 (PS 19) Parcel. In order to secure the SELLER against any breach by the PURCHASER in the performance of its obligations under this Section 2.4, and to secure the SELLER against any claim, loss or damage arising from environmental pollution or hazardous substances in, on or from the Yonkers Public School 19 (PS 19) Parcel, PURCHASER will provide to SELLER upon the execution and delivery of the Lease, a policy or policies of environmental insurance ("Environmental Insurance"), including, without limitation, Pollution Legal Liability and Cleanup Cost Cap coverage in the amount of \$1,000,000. The Environmental Insurance shall be from a carrier and in form and substance reasonably satisfactory to the _____ [INSERT AGENT FOR CITY'S NAME], and shall provide protection for preexisting, but undetected, environmental contamination, as well as for liabilities resulting from contamination that occurs during the policy term. Provided however, if the Institutional Lender requires personal guarantees of _____ in lieu of environmental insurance, then PURCHASER shall provide SELLER with original guaranty agreements addressed to SELLER from the aforesaid individuals for environmental hazards in the same form and on the same terms and conditions as provided to the Institutional Lender. This paragraph 2.4.1 shall survive the Closing Date.

2.4.2. Intentionally omitted.

2.4.3. PURCHASER shall have the option to apply to the N.Y.S. Departmental of Environmental Conservation ("DEC") for financial assistance for environmental remediation and for certain tax credits available under DEC's Brownfield Clean-up Program, if the Yonkers

Public School 19 (PS 19) Parcel is in need of environmental remediation. In the event of such DEC application, SELLER agrees to assist in the application process.

Section 2.5. SELLER's Title to Subject Property. If on the Lease Date, SELLER does not have such title to the Subject Property as it has agreed to convey under Article III of this Agreement, is unable to convey title in accordance with the terms of this Agreement, or is unable to satisfy any conditions precedent to PURCHASER's obligations under this Agreement (unless PURCHASER accepts such lesser title that SELLER may have by quitclaim deed without any reduction or abatement of the purchase price), PURCHASER's option to purchase shall be terminated and the PURCHASER shall not be obligated to enter into the Lease for the Yonkers Public School 19 (PS19) Parcel. Upon the termination of PURCHASER's option to purchase, and if this Agreement is terminated by PURCHASER, SELLER's sole obligation and PURCHASER's sole and exclusive remedy shall be to refund to PURCHASER the Deposit paid hereunder with interest earned thereon, if any. SELLER shall not be required to bring any action or proceeding or incur any expense to obtain such title as it has agreed to convey hereunder.

ARTICLE III ***SALE OF SUBJECT PROPERTY***

Section 3.1 Terms of Sale. Commencing on the Substantial Completion Date and expiring on the six (6) month anniversary of the Substantial Completion Date (the "Option Period"), PURCHASER shall have an exclusive option to purchase the Subject Property. Upon the exercise of PURCHASER's option to purchase, SELLER agrees to sell the Subject Property to PURCHASER and PURCHASER agrees to purchase and take the Subject Property from SELLER, on the Closing Date (as defined in Section 4.1 below), subject to the terms and conditions of this Agreement and

- (a) Any state of facts, including changes in street lines or grades, which an accurate survey or personal inspection may show, which does not render the title uninsurable unless such facts, changes in street lines or grades were caused or created by the PURCHASER in developing and constructing the Yonkers Public School 19 (PS 19) Parcel project which results in the Subject Property being uninsurable.
- (b) The Zoning Ordinance and all municipal codes and regulations and violations thereof, which do not render the title uninsurable.
- (c) Rights-of-way of record, restrictive covenants of record, easements of record, and storm, sanitary sewer, utility and water lines servicing or affecting the Subject Property.
- (d) No title to land lying in any street in front of or adjoining said Subject Property is included in this sale.

(e) Intentionally Omitted

Section 3.2 Subject Property. The Subject Property shall mean and include:

(a) The Subject Property and all of the buildings, structures, foundations, footings, fixtures and other improvements existing thereon on the date hereof.

(b) Any and all equipment, inventory, supplies, articles of personal property, free and clear of any liens or claims whether tangible or intangible, which are attached, appurtenant to, installed or placed in or upon or used for or adapted in any way to the Subject Property.

(c) All right, title and interest, if any, of SELLER in and to any land lying in the bed of any highways, street, road or avenue, open or proposed, including vaults, if any, any strips and gores in front of or adjoining the Property, and all right, title and interest of SELLER in and to the award made or to be made in lieu thereof and in and to any unpaid award for damages to the Subject Property by reason of any change of grade of any highway, street, road or avenue adjoining the Subject Property.

(d) All right, title and interest of SELLER in and to all licenses, permits, franchises and approvals, resolutions or consents (to the extent they may be transferred or assigned) issued or made by any federal, state or municipal authority relating to the development, rehabilitation or use of the Subject Property, running to or in favor of SELLER, its successors and assigns.

Section 3.3. Purchase Price. The purchase price is _____ AND 00/100 (\$_____.00) DOLLARS, payable as follows:

(a) By PURCHASER's check payable to SELLER's attorneys, as escrow agent, (subject to collection) in the amount of [Ten Percent of Purchase Price] _____ AND 00/100 (\$_____.00) DOLLARS (the "Deposit"), delivered on the date of execution and delivery of this Agreement. The Deposit shall be held in escrow by SELLER's attorneys upon the terms and conditions set forth in Section 16.24 hereof. Any interest or other proceeds of the investment of the Deposit shall be the property of the SELLER except as otherwise set forth herein.

(b) The balance of _____ AND 00/100 (\$_____.00) DOLLARS, to be paid at the Closing.

(c) Intentionally Omitted

Section 3.4. Acceptable Funds. All monies payable under this Agreement, unless otherwise specified, shall be either:

(a) Cash, but not over \$1,000.00;

(b) Good certified check of PURCHASER, or official check of any bank, savings bank or trust company having a banking office in the State of New York, payable to the order of SELLER, or as SELLER may direct;

(c) Money payable to SELLER at the Closing, other than the purchase price, may be by check of PURCHASER up to the amount of \$2,000.00; or

(d) As otherwise agreed to by SELLER or SELLER's attorney.

Section 3.5 Closing Adjustments. (a) The following shall be adjusted as of the Lease Date:

(iv) real estate taxes and any other state, county or municipal charges;

(v) any special assessments;

(vi) water, gas, electric and sewer charges, it being agreed that PURCHASER shall obtain prior to Closing final readings of all metered accounts.

(b) If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes shall be upon the basis of the old tax rate for the preceding period applied to the latest assessed valuation. Any errors or omissions in computing apportionments at Closing shall be corrected. This provision shall survive the Closing for a period of six months.

Section 3.6 Closing Costs. All real property transfer taxes payable by reason of the Lease or of conveyance of title as provided for in this Agreement and any costs related to the recordation of this Agreement, the Lease or the deed shall be paid by PURCHASER. PURCHASER shall pay the costs of any title insurance or surveys obtained by PURCHASER. All unpaid real property taxes, assessments, water charges and sewer charges, together with any interest and penalties thereon, if any, from the date of the Lease to the Closing Date shall be paid by PURCHASER at the Closing, as provided in Section 3.7. All other closing costs not specifically allocated by this Agreement shall be allocated in accordance with local custom in Westchester County, as determined by the Title Company.

Section 3.7 Credits, Payments from Purchase Price. SELLER shall adjust the amount of any unpaid taxes, assessments, water charges and sewer charges, together with any interest and penalties thereon on the Subject Property and incurred prior to the date of the Lease. If there is anything else affecting the sale, which SELLER is obligated to pay and discharge at Closing, SELLER may use any portion of the purchase price to discharge it. As an alternative, SELLER may deposit money with the Title Company to assure discharge, but only if the Title Company will insure PURCHASER's title clear of the matter or insure against its enforcement out of the Subject Property. Upon request, made within a reasonable time before the Closing, the PURCHASER agrees to provide separate certified checks up to a maximum of six (6) as requested to assist in clearing up any such matters.

ARTICLE IV

CLOSING; CONDITIONS OF CLOSING

Section 4.1 Time and Place of Closing. The closing (the “Closing”) shall take place at the offices of the Corporation Counsel, Room 300, City Hall, Yonkers, New York, or at the offices of PURCHASER’s mortgage lender or of said lender's attorneys in the County of Westchester or the County of New York, at 10:00 A.M., on a date determined in accordance with Section 4.2 below.

Section 4.2 Date of Closing. Unless otherwise extended by SELLER under Section 14.2 hereof, the date on which the Closing shall occur (such date, as the same may be adjourned in accordance with the provisions of this Agreement, being herein referred to as the “Closing Date”) shall be during the Option Period and may be the earlier of (a) a date mutually satisfactory to PURCHASER and SELLER, or (b) ninety (90) days following Final Completion (the “Outside Date”).

Section 4.3. Conditions of PURCHASER’s Obligation to Close. The obligation of the PURCHASER to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that PURCHASER at its election, evidenced by notice delivered to SELLER prior to or at the Closing, may waive any or all of the following conditions:

4.3.1 All representations, warranties, acknowledgments and covenants made by SELLER in this Agreement shall be true and correct in all material respects at the date of Closing.

4.3.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent or materially interfere with the rehabilitation, conversion or use of the Subject Property in accordance with this Agreement or the Governmental Approvals; and of which impediment PURCHASER has informed SELLER with reasonable promptness.

4.3.3 SELLER shall own good, insurable (by the Title Company or other title insurance company licensed in New York State) title to the Subject Property, and shall be able to convey the Subject Property to PURCHASER pursuant to this Agreement, subject only to the Permitted Exceptions.

Section 4.4 Conditions of SELLER's Obligation to Close. The obligation of SELLER to close hereunder is expressly conditioned upon the fulfillment by and as of the Closing Date of each of the conditions listed below, provided, however, that SELLER at its

election, evidenced by notice delivered to PURCHASER prior to or at the Closing, may waive any or all of the following conditions:

4.4.1 All representations, warranties, acknowledgments and covenants made by PURCHASER in this Agreement shall be true and correct in all material respects at the date of Closing.

4.4.2 No laws, statutes, ordinances, governmental orders, regulations, rules or requirements shall have been enacted, adopted, issued or otherwise promulgated, and/or shall be in force, that would prevent or materially interfere the rehabilitation, conversion or use of the Subject Property in accordance with this Agreement; and of which impediment SELLER has informed PURCHASER with reasonable promptness.

Section 4.5 Closing Transactions. The following transactions and deliveries shall occur at the Closing:

4.5.1. SELLER shall deliver:

(a) A statutory form of quitclaim deed (the "Deed"), containing the covenant required by Section 13 of the Lien Law, signed and acknowledged by SELLER in proper form for recording so as to convey the title required by this Agreement. The Deed shall be delivered to the Title Company at the Closing for recordation.

(b) A TP-584 form pertaining to the transfer of the Subject Property, signed by SELLER.

(c) Such customary affidavits pertaining to title as the PURCHASER's or its lender's title insurer may reasonably require.

(d) Certified resolution(s) of SELLER authorizing the conveyance of the Subject Property to the PURCHASER.

(e) Any and all documents, registrations, keys, originals of expired leases or occupancy agreements with current tax bills, etc., used in or applicable to the operation and maintenance of the Subject Property, as is.

4.5.2 At the Closing PURCHASER shall:

(a) Deliver to SELLER good certified or official bank checks in the amount of \$_____ as payment of the portion of the purchase price payable at the Closing, as adjusted for apportionments and credits as herein provided.

(b) Cause the Deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes, if any, to be delivered to the appropriate officers promptly after the Closing.

ARTICLE V

ARCHITECTURAL PLANS

Section 5.1 PURCHASER's Proposal. PURCHASER's proposed plans are attached hereto as **Exhibit A** and have been initialed by _____ [insert agent for City's name] and sets forth the Architect's renderings and PURCHASER's description of the program of Improvements to be developed under this Agreement ("Conceptual Development Plans").

Section 5.2 Preliminary Development Plan. Attached to this Agreement as **Exhibit B** is (i) a list of drawings prepared by the Architect, (ii) a preliminary construction schedule, and (iii) a pro-forma construction budget. SELLER hereby approves the foregoing **Exhibit C** attachments as the approved "Preliminary Development Plan" for all purposes under this Agreement.

Section 5.3 Construction Schedule Updates. PURCHASER will provide an updated and more detailed construction schedule along with specifications, material samples and narrative prepared by the Architect when PURCHASER submits the Construction Plans, as may reasonably be required by _____ [insert agent for City's name].

Section 5.4 Modifications of Plans, Construction Plans and Construction Agreements by PURCHASER. No changes to the approved Preliminary Development Plan or, the Construction Plans or the Construction Agreements affecting the elevations of the structures, the footprint of the structures, exterior materials, fenestration, unit mix or density of the structures shall be made without the written approval of _____ [insert agent for City's name] ("Modifications"). If PURCHASER wishes to make modifications to the approved Plans, either directly to the Preliminary Development Plan or to change the Construction Agreements in connection with the Modifications ("Change Orders"), PURCHASER shall submit the proposed Modifications or Change Orders to _____ [insert agent for City's name] for review and approval by the SELLER. Any such submission shall clearly identify all changes, omissions and additions as compared to the approved Preliminary Development Plan, the Construction Plans or Construction Agreements. If the _____ [INSERT AGENT FOR CITY'S NAME] determines, in its reasonable judgment, that the proposed modifications conform to the requirements of this Agreement and are substantially consistent with the approved Preliminary Development Plan, the Construction Plans or the Construction Agreements, the _____ [INSERT AGENT FOR CITY'S NAME] shall so notify PURCHASER, and the plans and agreements for which such Modifications or Change Orders were submitted shall be deemed to incorporate the modifications that have been approved by the _____ [INSERT AGENT FOR CITY'S NAME], and PURCHASER shall perform its obligations under this Agreement in accordance with such plans as so modified. If the _____ [INSERT AGENT FOR CITY'S NAME] determines, in its

reasonable judgment, that the proposed Modifications or Change Orders are not acceptable, the _____ [INSERT AGENT FOR CITY'S NAME] shall so notify PURCHASER, specifying in reasonable detail in what respects they are not acceptable, and PURCHASER shall either (a) withdraw the proposed Modifications or Change Orders, in which case, construction of the Improvements shall proceed on the basis of the Plans or Construction Agreements previously approved by the _____ [INSERT AGENT FOR CITY'S NAME], or (b) revise the proposed modifications or Change Orders in response to the _____ [INSERT AGENT FOR CITY'S NAME]'s objections, and resubmit such modifications or Change Orders to the _____ [INSERT AGENT FOR CITY'S NAME] for review and approval within thirty (30) days after such notification from the _____ [INSERT AGENT FOR CITY'S NAME]. Each review by the _____ [INSERT AGENT FOR CITY'S NAME] under this Section 5.4 shall be carried out within ten (10) business days following the date of submission by PURCHASER of the proposed change.

Section 5.5 Construction Plan Submission for Building Permit. The Construction Plans for the Yonkers Public School 19 (PS 19) Parcel shall be completed by the Architect within 15 days of the Lease Date, and shall be delivered to _____ [INSERT AGENT FOR CITY'S NAME] for review and approval prior to delivery to the Building Department. _____ [INSERT AGENT FOR CITY'S NAME] shall render its approval of the Construction Plans within 15 days of PURCHASER's submission of the Construction Plans to _____ [INSERT AGENT FOR CITY'S NAME]. The Construction Plans shall be based upon the Plans previously submitted to the City with respect to interior and exterior design modifications from the Preliminary Development Plans in accordance with Section 5.4. PURCHASER shall submit its completed and approved Construction Plans to the Building Department in connection with its building permit application within 30 days of the Lease Date. All required building permits for the footing and foundation plans shall be obtained within 30 days of the Lease Date.

Section 5.6 Compliance with Requirements. The Plans and the Construction Plans for the Improvements shall comply with the Requirements. The responsibility to assure such compliance shall rest with PURCHASER. _____ [INSERT AGENT FOR CITY'S NAME]'s approval of the any plans under this Article V shall not be, nor shall it be construed to be or relied upon as, a determination that such plans comply with the Requirements.

Section 5.7 Quality of Construction and Materials. All Construction Work shall be done promptly and in a good and workmanlike manner and shall be of a quality and class consistent with the current customs and practice for construction of similar improvements. All materials and equipment to be installed, incorporated or located in the Yonkers Public School 19 (PS 19) Parcel shall be new or like new and first quality.

Section 5.8 Ownership of Drawings, Specifications and Documents. Until the Closing Date, all architectural and engineering drawings, specifications and documents ("Architectural Materials") prepared in connection with the design, development and construction of the Improvements, subject to any rights of the Institutional Lender to the Architectural Materials, shall be the property of SELLER. Subsequent to the Closing Date, the Architectural Materials shall be the property of PURCHASER.

ARTICLE VI

CONSTRUCTION OF IMPROVEMENTS

Section 6.1 Commencement and Substantial Completion of Construction. The construction of the Improvements (the “Construction Work”) shall commence within thirty (30) days' of the issuance of building permits by the Building Department, and shall be prosecuted with all reasonable diligence and without interruption subject to Unavoidable Delays. The Construction Work shall be Substantially Completed in a good and workmanlike manner in accordance with the Construction Plans, the Requirements and this Agreement, subject to Unavoidable Delays, no later than twenty-one (21) months after the Lease Date (the “Substantial Completion Date”); provided that in the event of any extension(s) hereunder of the time for Substantial Completion of the Improvements, by reason of one or more events of Unavoidable Delay, the period of extension (considered cumulatively and in the aggregate for all such events of Unavoidable Delay), shall not exceed twelve (12) months.

Section 6.2 Studies; SEQRA. PURCHASER shall be responsible for preparing all materials and studies required for compliance with SEQRA at PURCHASER’S sole cost and expense.

Section 6.3. Intentionally Omitted.

Section 6.4 Performance Bonds; Construction Milestones. Throughout the entire period of construction of the Yonkers Public School 19 (PS 19) Parcel project, PURCHASER shall maintain in full force and effect payment and performance bonds and/or other security representing an amount equal to the hard costs of development of the project or the performance and payment security requirements of the Institutional Lender. Provided however, if the Institutional Lender requires personal guarantees of _____ in lieu of payment and performance bonds, then PURCHASER shall provide SELLER with original guaranty agreements addressed to SELLER from the aforesaid individuals for completion of construction in the same form and in the same amounts as provided to the Institutional Lender.

PURCHASER shall accomplish certain measured milestones in the Construction Work which shall be mutually agreed upon by SELLER and PURCHASER and shall be set forth in the Construction Work schedule. PURCHASER’s representative shall attend Construction Work monthly meeting held by the _____ [INSERT AGENT FOR CITY’S NAME] so that the progress of Construction Work can be monitored by the _____ [INSERT AGENT FOR CITY’S NAME].

ARTICLE VII

ADDITIONAL AGREEMENTS BETWEEN THE PARTIES

Section 7.1 Governmental Approvals.

7.1.1 PURCHASER shall apply for, as soon as practicable after the date hereof, and shall pursue with due diligence, all Governmental Approvals for the Improvements. PURCHASER is responsible for applying for and obtaining all building permits and other building-related permits such as temporary certificates of occupancy, certificates of occupancy, plumbing, electrical and tap-in permits to complete the Improvements, including commercial tenant uses. PURCHASER also is responsible for obtaining any zoning or building code approvals (including without limitation variances) that may hereafter be required for the Yonkers Public School (PS19) Parcel, including without limitation, tenant uses within the Improvements. In the event that either party to this Agreement shall determine that additional Governmental Approvals are required, such party shall promptly notify the other party of such fact, including a projected date for the obtaining of such Governmental Approvals.

7.1.2 The cost of obtaining the Governmental Approvals, which shall include, without limitation, filing fees and fees of PURCHASER's attorneys and consultants, shall be paid by PURCHASER.

7.1.3 The failure of a party to obtain the Governmental Approvals required to be obtained by such party shall constitute an Event of Default hereunder unless, despite such party's best efforts, circumstances beyond the control of such party preclude it from obtaining such Governmental Approvals.

Section 7.2 Removal of Utility Lines. If applicable, SELLER agrees to use commercially reasonable efforts to have the utility companies remove certain above-ground utility lines and have them installed underground, provided that SELLER shall not be required to pay such utility companies any fees in connection with such removal.

ARTICLE VIII

[INTENTIONALLY OMITTED]

ARTICLE IX

PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

Section 9.1 Representations as to Redevelopment. PURCHASER represents and agrees that its purchase of the Subject Property and its other undertakings pursuant to this

Agreement are (and the Yonkers Public School 19 (PS 19) Parcel, when purchased, shall be used for) the purpose of redevelopment and not for speculation. PURCHASER further recognizes that in view of:

9.1.1 The importance of the redevelopment of the Yonkers Public School 19 (PS 19) Parcel to the Seller, the _____ [INSERT AGENT FOR CITY'S NAME], and the general welfare of the City; and

9.1.2 The substantial expenditures and other public commitments made and to be made by the City for the purpose of making such redevelopment possible, the qualifications and identity of PURCHASER are of particular concern to the community and the City. PURCHASER further recognizes that it is because of such qualifications and identity that SELLER is entering into this Agreement with PURCHASER, and in so doing, is further willing to accept and rely upon the obligations of PURCHASER for the faithful performance of all undertakings and covenants by it to be performed hereunder.

Section 9.2 Anti-Speculation Provisions. Prior to the Final Completion, PURCHASER may only assign its interest in this Agreement or the Subject Property to an Affiliate. Any transfers or assignments to others who are not Affiliates will be limited to not more than fifty (50%) percent of PURCHASER's interest in this Agreement or the Subject Property and such transfers or assignments shall require the prior written approval of SELLER, which shall not be unreasonably withheld. Provided, however, neither this Agreement nor PURCHASER's interest in this Agreement or the Subject Property, nor any part thereof, nor any ownership or member's interest in PURCHASER (or in any successor-in-interest to PURCHASER), may be sold, transferred or assigned to anyone, including an Affiliate, by PURCHASER or by any such successor if the consideration payable by the transferee or assignee or on its behalf shall exceed the aggregate amount of all expenditures actually made by PURCHASER for or in connection with the project prior to such transfer or assignment, it being the purpose and intention of this Section 9.2 that PURCHASER (or any such successor) shall not make any profit through such sale, transfer or assignment prior to Final Completion of the Improvements.

Section 9.3 Transfers. Subsequent to Final Completion and for a six (6) month period following Final Completion not exceeding closing of title, neither this Agreement nor PURCHASER's interest in this Agreement, or any part thereof, or any ownership or member's interest in PURCHASER (or in any successor-in-interest to PURCHASER), may be sold, transferred or assigned by PURCHASER or by any such successor without the prior written consent of SELLER, which consent shall not be unreasonably withheld, provided that the PURCHASER shall pay to the SELLER an amount equal to ten (10%) per cent of the net transaction proceeds obtained from any such assignee.

ARTICLE X

EQUAL EMPLOYMENT OPPORTUNITY

Section 10.1 Federal and State Requirements.

10.1.1 PURCHASER agrees to comply with City of Yonkers and State of New York civil rights ordinances and with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968 as amended, Section 109 of Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1976, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

10.1.2 PURCHASER will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, age, sex, marital status or disability, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

10.1.3 PURCHASER will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by SELLER setting forth the substance of the provisions of subsection 10.1.1, and including such provisions of the State of New York's laws against discrimination as the Division of Human Rights may prescribe.

10.1.4 PURCHASER will state in all solicitations or advertisements for employees placed by or on behalf of PURCHASER, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability.

10.1.5 PURCHASER will include (or cause to be included) the provisions of subsections 10.1.1 through 10.1.3 in every contract, subcontract or purchase order, and shall require and cause PURCHASER to do so, in such a manner that such provisions will be binding upon each contractor, subcontractor or vendor as to operations to be performed within the State of New York. PURCHASER will take such action in enforcing such contract, subcontract or purchase order as SELLER may direct, including sanctions or remedies for non-compliance.

10.1.6 As required by Section 220-e of the New York State Labor Law, PURCHASER agrees: (1) that in the hiring of employees for the performance of work under this Agreement or any contract or subcontract hereunder, no contractor, subcontractor, nor any person acting on behalf of such contractor, or subcontractor shall by reasons of race, religion, creed, color, disability, sex or national origin, discriminate against any citizen of the State of New York who is qualified and available to perform to work to which the

employment relates; and (2) that no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, creed, color, disability, sex or national origin.

10.1.7 This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and 24 CFR 570, Part 1. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the PURCHASER shall cause or require a covenant running with the land to be inserted in the Deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the City and the United States are beneficiaries of and entitled to enforce such covenants. PURCHASER, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate.

10.1.8 PURCHASER agrees to comply with any federal regulations issued pursuant to compliance with Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. 706) which prohibits discrimination against the handicapped in any federally assisted program. PURCHASER shall obtain from the City any guidelines necessary for compliance with that portion of the regulations in force during the term of this contract.

Section 10.2 Advertising. During construction and thereafter PURCHASER agrees to include in all advertising for the sale of or rental of residential dwelling units or commercial space in the Improvements a statement to the effect: (a) that the Improvements are open to all persons without discrimination on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status or sexual orientation, and (b) that there shall be no discrimination in public access and use of the Yonkers Public School 19 (PS 19) Parcel to the extent that is open to the public.

Section 10.3 City Requirements. PURCHASER agrees that it shall be committed to carry out, pursuant to the City's specifications, an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. PURCHASER shall obtain from the City any Affirmative Action guidelines required to assist in the formulation of such program. PURCHASER shall submit a plan for an Affirmative Action Program for approval prior to the commencement of construction. In addition to the foregoing requirements of this Article, PURCHASER, its successors and assigns shall, in performing its responsibilities as redeveloper under this Agreement, comply with the requirements set forth in the Affirmative Action Document attached to this Agreement as **Exhibit D**. Notwithstanding anything to the contrary in such Affirmative Action Document, PURCHASER's outreach thereunder to individuals and businesses shall not be limited to those situated in the Target Area or the City.

Section 10.4 Remedies. If PURCHASER fails to comply with its obligations under this Article X, SELLER's sole remedy shall be to apply to a court of competent

jurisdiction for such equitable relief as may be available to secure performance by PURCHASER, or to take such other actions as may be provided by law.

ARTICLE XI

REPRESENTATIONS

Section 11.1 Representations of PURCHASER. In order to induce SELLER to enter into this Agreement, PURCHASER hereby represents and warrants, with full knowledge that SELLER shall rely on such representations and warranties, that (a) PURCHASER is a duly formed and validly existing _____ duly qualified to do business in the State of New York and has full power and authority to consummate the transactions contemplated hereby; (b) _____, exercises effective day-to-day control and management over PURCHASER and over all activities for which PURCHASER is responsible under this Agreement; (c) this Agreement has been duly authorized by all necessary action on the part of PURCHASER and has been duly executed and delivered by PURCHASER and neither the execution and delivery hereof, nor compliance with the terms and provisions hereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained; (2) contravenes any existing law, judgment, governmental rule, regulation or other applicable to or binding on PURCHASER (except, and to the extent, that any of the same are to be modified through Governmental Approvals as herein contemplated), or (3) contravenes or results in any breach of or, except as contemplated by this Agreement, results in the creation of any lien or encumbrance upon any property of PURCHASER under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other Agreement or instrument to which PURCHASER is a party, specifically including any covenants of any bonds, notes, or other forms of indebtedness of PURCHASER outstanding on the date hereof; and (e) this Agreement constitutes a legal, valid and binding obligation of PURCHASER enforceable against PURCHASER in accordance with the terms thereof except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratoriums or similar laws affecting the enforcement of creditors' rights generally and by legal and equitable limitations on the enforceability of specific remedies.

Section 11.2 Representations of SELLER. In order to induce PURCHASER to enter into this Agreement, SELLER hereby represents and warrants, with full knowledge that PURCHASER shall rely on such representations and warranties, that (a) SELLER has full power and authority to consummate the transactions contemplated hereby; (b) this Agreement has been duly authorized by all necessary action on the part of SELLER, and has been duly executed and delivered by SELLER; neither the execution and deliver thereof, nor compliance with the terms and provisions thereof (1) requires the approval and consent of any Governmental Agency or any other entity or person, except such as have been duly obtained or such as are Governmental Approvals to be obtained; (2) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on SELLER (except, and to the extent, that any of the same are to be modified through Governmental Approvals as contemplated herein), or (3) contravenes or results in any breach of or, except as contemplated by this Agreement, results in

the creation of any lien or encumbrance upon any property of SELLER under any indenture, mortgage, deed of trust, bank loan or credit agreement, applicable ordinances, resolutions or, on the date of this Agreement, any other Agreement or instrument to which SELLER is a party, specifically including any covenants of any bonds, notes or other forms of indebtedness of SELLER outstanding on the date hereof; and (c) this Agreement constitutes a legal, valid and binding obligation of SELLER, enforceable against SELLER in accordance with the terms thereof. SELLER covenants that all of the representations set forth in this Agreement will be true and correct at the time of Closing.

Section 11.3 No Other Representations. Each of the parties to this Agreement acknowledges to the other that, except as otherwise specifically provided herein, (a) no representations, statement or warranties, express or implied, have been made by, or on behalf of, any such party with respect to such party or with respect to the Subject Property, or with respect to the transactions contemplated by this Agreement, and (b) it has not relied on such representations, statements or warranties.

Section 11.4 Subject Property "As Is". PURCHASER has inspected the Subject Property, or caused an inspection thereof to be made on PURCHASER's behalf. PURCHASER is thoroughly acquainted with the condition of the Subject Property and the improvements located therein, if any, including, but not limited to soil, drainage, and the sub-surface conditions beneath the Subject Property. PURCHASER acknowledges that neither SELLER nor any person acting or purporting to act for SELLER has made or now makes any representations or warranties, and that SELLER is unwilling to make any representations and has held out no inducements to PURCHASER other than those expressed herein. Without limiting the generality of the foregoing, PURCHASER has not relied on any representations or warranties, and SELLER has not made any representations or warranties in either case express or implied, as to (i) the current or future real estate tax liability, assessment or valuation of the Subject Property, (ii) the potential qualification of the Subject Property for any and all benefits conferred by federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated; (iii) the compliance of the Subject Property in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to the Subject Property's non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Subject Property from any source, including but not limited to State, local or Federal government or any institutional lender; (v) the current or future use of the Subject Property; (vi) the present and future condition and operating state of any and all machinery or equipment on the Subject Property and the present or future structural and physical condition of the Subject Property or its suitability for rehabilitation or renovation; (vii) the ownership or state of title of any personal property on the Subject Property; (viii) the presence or absence of any rules or notices of violations of law issued by any Governmental Agency; (ix) the layout, leases, rents, income, expenses or operation of the Subject Property; (x) financial statements; or (xi) any other matter or thing affecting or relating to the Subject Property. SELLER is not liable or bound in any manner by any verbal, or written statements, representations, real estate brokers' "set-ups" or information pertaining to the Subject Property or the operation, layout, expenses, condition, income, leases or rents furnished by any

real estate broker, salesman, agent, employee, or other person, unless the same are specifically set forth herein. PURCHASER agrees to take the Subject Property "as is", and in its present condition, subject to any deterioration of any kind, nature or extent, between the date hereof and the Closing Date. SELLER shall have no obligation to make any repairs to the Subject Property of any nature or description between the date hereof and the Closing Date.

ARTICLE XII

DEFAULT AND REMEDIES; TERMINATION

Section 12.1 Events of Default by PURCHASER. The occurrence of any of the following shall be an "Event of Default" by PURCHASER under this Agreement:

12.1.1 Failure to commence construction, substantially complete construction on the Substantial Completion Date, to accomplish Final Completion; and/or failure to accomplish the major milestones on the Construction Work schedule and to attend monthly Construction Work meetings at the _____ [INSERT AGENT FOR CITY'S NAME], as more fully described in Section 6.4; and, if the PURCHASER exercises the option to purchase hereunder, and fails to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement and/or fails to pay the purchase price in the amounts and at the times herein set forth hereof for reasons other than Unavoidable Delay, and such failure shall continue for a period of thirty (30) days after written notice thereof by SELLER to PURCHASER, specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed, which cannot by their nature or because of Unavoidable Delays be reasonably performed or done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist so long as PURCHASER shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion;

12.1.2 The failure of PURCHASER to pay any sum to SELLER required to be paid by PURCHASER under this Agreement (other than the purchase price) when the same shall become due and payable and such failure shall continue for thirty (30) days after notice from SELLER to PURCHASER;

12.1.3 If PURCHASER shall admit, in writing, that it is unable to pay its debts as they become due;

12.1.4 If PURCHASER shall make an assignment for the benefit of creditors;

12.1.5 If PURCHASER shall file a voluntary petition under the Bankruptcy Code of the United States, or if such petition shall be filed against PURCHASER and an order for relief shall be entered, or if PURCHASER shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition,

readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code, or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of PURCHASER, or of all or any substantial part of its properties;

12.1.6 If within ninety (90) days after the commencement of a proceeding against PURCHASER seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within ninety (90) days after the appointment, without the consent or acquiescence of PURCHASER, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of PURCHASER, or of all or any substantial part of its properties, such appointment shall not be vacated or stayed on appeal or otherwise, or if, within ninety (90) days after the expiration of any such stay, such appointment shall not be vacated;

12.1.7 If any of the representations made by PURCHASER in Section 11.1 of this Agreement shall be false or incorrect, in any material respect, and PURCHASER shall fail to cause, within thirty (30) days following notice of such misrepresentation to PURCHASER by SELLER, such misrepresentation to become true and correct as of a date within such thirty (30) day period; or

12.1.8 If PURCHASER shall fail to (i) obtain a Commitment (as defined in Section 13.1 below) within ninety (90) days after any required Planning Board or Zoning Board of Appeals approvals subject to any appeals undertaken by others in connection therewith, (ii) close on the Lease on the Lease Date or (iii) commence the Construction Work within thirty (30) days of the issuance of building permits by the Building Department, and any such failure shall continue for a period of thirty (30) days after notice thereof by SELLER to PURCHASER specifying such failure, unless and to the extent that such failure requires work to be performed, acts to be done, or conditions to be removed which by their nature or because of Unavoidable Delays cannot reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as PURCHASER shall have commenced curing the same within such thirty (30) day period and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion; or

12.1.9 If PURCHASER shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement and such failure shall continue for a period of thirty (30) days after notice thereof by SELLER to PURCHASER specifying such failure, unless and to the extent that such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as PURCHASER shall have commenced curing the same within such thirty (30) day period

and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion.

Section 12.2 Remedies of SELLER

12.2.1 (a) If an Event of Default by PURCHASER shall have occurred and shall not have been remedied within any applicable grace period provided in Section 12.1 hereof, SELLER shall have the right, at its option, and all other rights and remedies available to SELLER at law or in equity, to terminate this Agreement by giving thirty (30) days' written notice thereof to PURCHASER and any Institutional Lender, and upon the expiration of such notice period this Agreement shall be deemed terminated.

(b) If PURCHASER shall fail to Substantially Complete the Improvements in accordance with this Agreement within the time specified in this Agreement for Substantial Completion thereof, such failure shall constitute a default by PURCHASER under this Agreement, and SELLER shall have the right to terminate this Agreement and the Lease, retain the Deposit as liquidated damages, and to re-enter and take possession of the Subject Property.

12.2.2 In the event this Agreement shall be terminated by SELLER in connection with an Event of Default hereunder prior to Closing, then (a) SELLER shall be entitled to retain the Deposit, as liquidated damages for PURCHASER's default; and, in addition thereto, (b) PURCHASER shall pay to SELLER the reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by SELLER in terminating this Agreement, and upon the occurrence of the payments required under clauses (a) and (b) above, neither party shall have any further obligation under this Agreement.

Section 12.4 Events of Default by SELLER. The occurrence of any of the following shall be an "Event of Default" by SELLER under this Agreement:

12.4.1 The failure of SELLER to pay any sum to PURCHASER required to be paid by SELLER hereunder when the same shall become due and payable and such failure shall continue for thirty (30) days after written notice from PURCHASER to SELLER;

12.4.2 Failure to proceed to Closing when and in the manner required to do so under the terms and conditions of this Agreement.

12.4.3 If any of the representations made by SELLER in Section 11.2 of this Agreement shall be false or incorrect in any material respect, and SELLER shall fail to cause, within thirty (30) days following notice of such misrepresentation to SELLER by PURCHASER, such representation to become true and correct as of a date within such thirty (30) day period; or

12.4.4 If SELLER shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements contained in this Agreement and such failure shall continue for a period of thirty (30) days after notice thereof by PURCHASER to SELLER specifying such failure, unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot by their nature or because of Unavoidable Delays reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as SELLER shall have commenced curing the same within such thirty (30) day period, and shall, subject to Unavoidable Delays, diligently and continuously prosecute the same to completion.

Section 12.5 Remedies of PURCHASER. If an Event of Default by SELLER, shall have occurred and shall not have been remedied within any applicable grace period as provided in Section 12.4.4, except in the case of SELLER's willful default, PURCHASER'S sole remedy shall be, at its option, to terminate this Agreement by giving thirty (30) days notice thereof to SELLER, and upon the expiration of such notice period this Agreement shall be deemed terminated, the Deposit refunded to PURCHASER, and neither party shall have any further obligations hereunder.

Section 12.6 Strict Performance. No failure by SELLER or PURCHASER to insist upon the other party's strict performance of any covenant, agreement, term or condition of this Agreement, or to exercise any right or remedy available to such party, and no payment or acceptance of full or partial performance during the continuance of any Event of Default, shall constitute a waiver of any such Event of Default. No covenant, agreement, term or condition of this Agreement to be performed or complied with by either party, and no default by either party, shall be waived, altered or modified, except by a written instrument executed by the other party. No waiver of any default shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent default.

Section 12.7 Limitation of Liability of SELLER. Notwithstanding anything to the contrary set forth above, PURCHASER agrees that it shall look solely to the interest in the Subject Property owned by the SELLER, which shall be the value of the Subject Property at the time of the default for the enforcement of any remedy or the satisfaction of any obligation or liability of SELLER under or in connection with this Agreement or any other agreement or instrument to be executed pursuant to this Agreement, and PURCHASER shall not enforce any remedy or execute or collect any judgment out of or against any other assets or properties of SELLER. In addition, PURCHASER agrees that none of the officers, directors, members, officials, employees or agents of SELLER, and none of the members, officials, employees or agents of the _____ [INSERT AGENT FOR CITY'S NAME], shall have any personal obligations or liability hereunder or under any other agreement or instrument to be executed pursuant to this Agreement, or by reason of any action taken or not taken in connection herewith, and that PURCHASER shall not seek to assert any claim or enforce any rights hereunder against any of them.

ARTICLE XIII

MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

Section 13.1 On or before _____, 201_, PURCHASER shall obtain and deliver to SELLER the final terms and conditions from an Institutional Lender, constituting a firm written commitment (the "Commitment") pursuant to which such Institutional Lender agrees to make a loan (the "Construction Loan") to PURCHASER of funds to be used or applied in connection with the development and construction of the Improvements on the Yonkers Public School 19 (PS 19) Parcel or part thereof (including without limitation, interest and soft costs), in such amount, and upon such terms and conditions, as are sufficient, in the reasonable judgment of the _____ [INSERT AGENT FOR CITY'S NAME], to enable the PURCHASER to complete the construction of the Improvements as required under the terms and conditions of this Agreement.

Section 13.2 Limitation Upon Encumbrance of the Subject Property. Prior to Substantial Completion of the Improvements, PURCHASER shall not engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Subject Property or part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to the Subject Property, except for the purposes of obtaining, from an Institutional Lender:

13.2.1 the Construction Loan, and

13.2.2 such additional funds, if any, in an amount not to exceed the total of (a) the purchase price paid by PURCHASER to SELLER for the Subject Property, and (b) closing costs and expenses. PURCHASER shall have the right to enter into agreements with entities or investors admitted in compliance with any applicable requirements of Article IX hereof for the purpose of raising sufficient equity capital for the redevelopment of the Yonkers Public School 19 (PS 19) Parcel, including but not limited to federal, state and local tax credit programs ("Financing Entity Programs").

PURCHASER has notified SELLER of its intention to obtain financing secured by a first mortgage on the Yonkers Public School 19 (PS 19) Parcel. PURCHASER (or successor in interest) shall continue to notify SELLER in advance of any further financing, secured by mortgage or other similar lien instrument, it proposes to enter into with respect to the Yonkers Public School 19 (PS 19) Parcel or any part thereof prior to Substantial Completion with respect thereto, and in any event, it shall promptly notify SELLER of any encumbrance or lien that has been created on or attached to the Yonkers Public School 19 (PS 19) Parcel, whether by voluntary act of PURCHASER or otherwise.

ARTICLE XIV

PERMITTED EXCEPTIONS, OBJECTIONS TO TITLE

Section 14.1 Permitted Exceptions. Except as provided herein below, the Subject Property shall be subject at the time of the Closing only to the matters (the “Permitted Exceptions”) set forth below:

(a) Such controls and restrictions, including land use restrictions, as are set forth in this Agreement, it being agreed that such controls and restrictions shall survive the closing and shall be incorporated in the Deed.

(b) The provisions of the Zoning Ordinance and any and all other provisions of municipal ordinances, regulations and public laws.

(c) Licenses and easements for public utilities and the rights of any utility company to maintain and operate lines, conduits, cables and distribution boxes in, upon or over the Yonkers Public School 19 (PS 19) Parcel, provided that the same do not prevent the construction of the Improvements in accordance with the Construction Plans.

(d) State of facts set forth in survey attached hereto and made a part hereof.

Section 14.2 Title Report. PURCHASER shall promptly order (i) a search of title to the Subject Property, and (ii) a metes and bounds survey of the Subject Property, and the Yonkers Public School 19 (PS 19) Parcel (the “Survey”). Such Survey shall be certified to SELLER, PURCHASER, PURCHASER's title insurance company and any others as required by PURCHASER's lender. Promptly upon the receipt of such title report and Survey, PURCHASER shall deliver a copy to SELLER. SELLER shall have the right to cure or remedy any exception or objection to title subject to which PURCHASER is not required to take title hereunder (“Title Exceptions”), and, for such purpose, shall be entitled to reasonable adjournments of closing of title from time to time, not to exceed, in the aggregate, sixty (60) days. SELLER shall not be obligated to clear any such Title Exceptions or to incur expenditures for such purpose; but PURCHASER may elect to close subject to such Title Exceptions without adjustment of the purchase price. In the event that any update of such title report or of the Survey is received with respect to the Subject Property indicating additional Title Exceptions, PURCHASER agrees that within five (5) days after it receives such updated title report or updated survey, it will provide a copy or copies thereof to SELLER. Any matters of which PURCHASER shall not have given SELLER proper notice pursuant to the foregoing provisions of this Article shall be deemed accepted by PURCHASER, and the right to object thereto, as provided in this Article, shall be deemed to have been waived.

Section 14.3 Certificate of Substantial Completion. Upon the occurrence of Substantial Completion, as defined in Article I of this Agreement, PURCHASER shall be entitled, upon written request made to SELLER, to a Certificate of Substantial Completion for the Yonkers Public School 19 (PS 19) Parcel to such effect, and any such certification shall mean and provide that any remedies or rights with respect to re-entering or taking possession that SELLER shall have or be entitled to because of failure of PURCHASER or any successor in interest to the

Yonkers Public School 19 (PS 19) Parcel or any part thereof, to cure or remedy any default with respect to the construction of the Improvements on other parts of the Yonkers Public School 19 (PS 19) Parcel, or because of any other default in or breach of the Agreement by PURCHASER or such successor, shall not apply to the Yonkers Public School (PS 19) Parcel to which such certification relates. Such certification shall be duly executed and acknowledged by an officer of SELLER having authority to do so, and shall be in proper form for recordation in the Office of the Westchester County Clerk.

ARTICLE XV

ACCESS TO SUBJECT PROPERTY

Section 15.1 Right of Entry. SELLER hereby grants PURCHASER, its Affiliates, contractors, subcontractors, architects, agents and prospective mortgagees, the right to enter the Subject Property together with workers and materials at any time prior to the Lease Date for the following purposes, and with prior written notice to SELLER:

- (a) To make physical inspections of the Subject Property, including subsurface tests, soil test borings, water survey, topographical surveys, sewage disposal survey and draining determination.
- (b) To make any and all inspections, tests, probes, surveys and appraisals.
- (c) To conduct and to carry out any and all engineering studies and operations that are necessary to carry out the intent of this Agreement.

Section 15.2 Indemnification. PURCHASER shall indemnify, defend and save SELLER, the CITY OF YONKERS and the _____ [INSERT AGENT FOR CITY'S NAME], and each of their officers, directors, employees, agents and representatives (the "Indemnitees"), harmless from any and all loss, costs, damages, expenses and attorneys' fees resulting from personal injury, property damage or loss of value of the Subject Property which Indemnitees may suffer or incur as a result of any entry or activities of PURCHASER, its Affiliates, employees, contractors, subcontractors, architects, agents, invitees and prospective mortgages pursuant to this Agreement, except PURCHASER shall not be liable for such indemnification for negligent acts or omissions attributed to Indemnitees. The Deposit made hereunder shall stand as security for PURCHASER's obligations under this Section 15.2. The indemnification provided under this Agreement shall survive termination of this Agreement and shall survive the execution and delivery of any deed for the Subject Property.

Section 15.3 Insurance. Prior to any such entry upon the Subject Property, PURCHASER shall furnish to SELLER duplicate original policies of workmen's compensation insurance covering all persons to be employed in connection therewith, including those to be employed by all contractors and subcontractors, and of comprehensive public liability insurance (including property damage coverage) in which SELLER shall be named as an additional

insured, which policies shall be issued by companies, and shall be in form and amounts, as are reasonably satisfactory to SELLER.

ARTICLE XVI

MISCELLANEOUS

Section 16.1 Discharge of Liens.

16.1.1 Prior to the Closing, and subject to the provisions of the last sentence of Section 16.1.2, and except as permitted under Article XIII above, neither PURCHASER nor SELLER shall create or permit to be created or allow to continue any lien, encumbrance or charge upon the Subject Property or any part thereof, nor suffer any other matter or thing whereby the estate, right and interest of PURCHASER or SELLER, as the case may be, in the Subject Property or any part thereof might be impaired.

16.1.2 Prior to the Closing, if any lien at any time shall be filed in violation of the obligation of PURCHASER or SELLER, as the case may be, pursuant to Paragraph 16.1.1 hereof, then within ninety (90) days after notice of the filing thereof, such party shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. If such party shall fail to cause such lien to be discharged of record within the period aforesaid, and if such lien shall continue for an additional thirty (30) days after notice by PURCHASER or SELLER, as the case may be, to the party so failing, then, in addition to any other right or remedy, the party giving such notice may but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event, PURCHASER or SELLER, as the case may be, shall be entitled, if such party so elects, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of judgment in favor of the lienor with interest, cost and allowances. Any amount so paid by PURCHASER or SELLER, as the case may be, including all reasonable costs and expenses incurred by it in connection therewith, including reasonable attorneys' fees, together with interest thereon at the maximum legal rate permitted by State law, from the respective dates of the making of such payment or incurring of such costs and expenses, shall be paid within ten (10) days after demand by the party which was responsible for causing the lien to be discharged but failed to do so. Notwithstanding the provisions of this Paragraph 16.1.2, neither PURCHASER nor SELLER shall be required to discharge any such lien if it is in good faith contesting the same and has furnished a cash deposit or a surety bond or other security reasonably satisfactory to the other in an amount sufficient to pay such lien with interest and penalties.

Section 16.2 Conflict of Interest. No officer, director, member, official or employee of SELLER shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership or other entity in which he is, directly or indirectly, interested.

Section 16.3 Indemnification.

16.3.1 PURCHASER shall indemnify, defend and hold the Indemnitees (as defined in Section 15.2 hereof) harmless from any and all liabilities, losses, damages, penalties, judgments, awards, claims, demands, costs and/or expenses arising from actions for personal injury, property damage or loss of value of the Yonkers Public School 19 (PS 19) Parcel which Indemnitees or any third party may suffer or incur as a result of the acts or omissions of PURCHASER, its Affiliates, employees, contractors, subcontractors, architects, agents or invitees (collectively, "Indemnitors") and lawsuits or other proceedings arising, directly or indirectly, in whole or in part as a result of any acts or omissions of Indemnitors or any occurrence arising in connection with the design and construction of the Improvements under this Agreement, unless caused by the negligence or willful act or omission of INDEMNITEES. The PURCHASER'S obligations under this Section shall survive the Closing, the delivery of any deed hereunder and any termination of this Agreement.

Section 16.4 Intentionally omitted.

Section 16.5 Consents and Approvals. All consents and approvals, which may be given under this Agreement, shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Agreement or the failure on the part of a party to object to any such action taken without the required consent or approval shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 16.6 SELLER's Project Representative. SELLER hereby appoints the _____ [INSERT AGENT FOR CITY'S NAME] and _____ or his designee as its project representative for the project who will be responsible for coordinating the SELLER's activities hereunder, with PURCHASER, all Architects, contractors and Governmental Agencies. SELLER will notify PURCHASER prior to appointing any substitute representative.

Section 16.7 Intentionally omitted.

Section 16.8 No Broker. PURCHASER and SELLER each represent and warrant that no broker to whom a commission, fee or other compensation is payable is or has been involved in or brought about the transactions contemplated by this Agreement. Each of said parties shall indemnify and hold the others harmless from any and all claims, obligations, liabilities, costs or expense (including reasonable attorneys' fees) incurred as a result of any claim for brokerage commissions, fees or other compensation by any person or entity which alleges having acted or dealt with the indemnifying party in connection with the Project or the transactions contemplated by this Agreement. The parties' obligations under this Section shall survive the Closing and any termination of this Agreement.

Section 16.9 Recording. Except as provided below, no party shall cause this Agreement or a memorandum hereof to be recorded without the prior written consent of the other.

Section 16.10 Relationship of Parties. This Agreement is not be construed to create a partnership or joint venture between the parties hereto.

Section 16.11 All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication (a “notice”) shall or may be given to, or served upon, any of the parties by any other(s), or whenever any of the parties desires to give or serve upon the other(s) any notice, each such notice shall be in writing and shall be effective for any purpose only if given or served by personal delivery, with acknowledgment of receipt or by certified mail, postage prepaid, return receipt requested, addressed as follows:

If to SELLER:

_____, as agent for the City of Yonkers; City Hall - Suite ____
Yonkers, NY 10701
Attention: _____

With copies to:

Corporation Counsel
City Hall - Suite 300
Yonkers, New York 10701

If to PURCHASER:

With copies to:

If to Escrow Agent:

Section 16.12. Intentionally omitted.

Section 16.13 Negotiated Document. The parties acknowledge that the provisions and language of this Agreement have been negotiated, and agree that no provision of this Agreement shall be construed against any party by reason of such party having drafted such provision of this Agreement.

Section 16.14 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

Section 16.15 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

Section 16.16 Captions. The captions of this Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Agreement or in any way affect this Agreement.

Section 16.17 Gender, Etc. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural, and the plural shall include the singular as the context may require.

Section 16.18 No Third Party Beneficiaries. Except as may be expressly provided to the contrary in this Agreement, nothing contained in this Agreement shall or shall not be construed to confer upon any person other than the parties hereto, any rights, remedies, privileges, benefits or causes of action to any extent whatsoever.

Section 16.19 Successors and Assigns. (a) The agreements, terms, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of the SELLER and PURCHASER and, except as otherwise provided herein, their respective successors and permitted assigns.

(b) Wherever in this Agreement it is stated that a section, term or provision of this Agreement shall survive termination of this Agreement, survival shall apply to the parties hereto and each of their respective successors and assigns.

Section 16.20 Further Assurances. Each party hereto shall do all acts and things and make, execute and deliver such written instruments as shall from time to time be reasonably required to carry out the terms and provisions of this Agreement.

Section 16.21 No Amendment. Neither this Agreement nor any provisions hereof may be changed, modified, amended, supplemented, altered, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against who enforcement of the change, modification, amendment, supplement, alteration, waiver, discharge or termination is sought, and, if required by any mortgage document, the applicable lender has consented thereto.

Section 16.22 Separability. Unenforceability for any reason of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement and if any term or provision of this Agreement or the application thereof to any person or circumstance shall for any reason and to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances to which it is valid or enforceable, shall not be limited, impaired or otherwise affected thereby, and each term and provision of this Agreement shall be valid and enforced to the extent permitted by law.

Section 16.23 Risk of Loss. The provisions of Section 5-1311 of the General Obligations Law shall apply to the sale and purchase provided for in this Agreement. For the purpose of interpreting said Section 5-1311, neither a closing of the sale of the Subject Property in escrow, nor a license agreement for PURCHASER to perform work shall be deemed to constitute "legal title or possession of the Subject Property", it being agreed that until the fee title has been transferred to PURCHASER or the parties hereto have executed the Lease, the provisions of Section 5-1311(a) (1) and (2) shall apply.

Section 16.24 Deposit in Escrow. The Deposit made hereunder shall be held in escrow for the account of the SELLER by the City of Yonkers Department of Finance _____ ("Escrow Agent"), on the following terms and conditions:

(a) The funds shall be held in an interest bearing special bank or money market fund account or invested in United States treasury securities. Notwithstanding the foregoing, Escrow Agent shall not be liable to either party for any failure to obtain interest on the escrowed funds. Except in connection with an action, which may be commenced, as provided in subparagraph (d) no charges shall be imposed by the Escrow Agent.

(b) Upon closing of title under the contract, the funds shall be paid to SELLER, principal only to be credited to the purchase price due hereunder.

(c) In the event of termination or cancellation of this Agreement in accordance with its terms, and written confirmation executed by SELLER of such termination or cancellation, the funds shall be immediately paid to PURCHASER, unless such termination is as a result of PURCHASER's default.

(d) In the event of termination or cancellation of this Agreement for any reason herein not provided, then the funds shall be paid only in the manner provided in a written instruction to the Escrow Agent, executed by both SELLER and PURCHASER. In the event of a dispute with respect to the funds held in escrow or in the absence of such joint written instruction to the Escrow Agent, then the Escrow Agent shall deposit the funds in a court of competent jurisdiction in an appropriate interpleader action naming both SELLER and PURCHASER.

(e) Upon the payment of the funds pursuant to any provision hereof, the Escrow Agent shall be fully discharged and released from any and all further liability or obligation with respect to the escrowed funds.

(f) SELLER and PURCHASER each agree that the Escrow Agent shall be entitled to rely on such notices or certifications as may be furnished to it without inquiring into the sufficiency or correctness thereof and without inquiring as to the application of any funds paid or disbursed pursuant to this Agreement, that the Escrow Agent is discharged and released from any and all responsibility or liability with respect to the funds deposited with it except for the willful malfeasance or gross negligence of the Escrow Agent, and that SELLER and

PURCHASER shall jointly and severally indemnify the Escrow Agent and hold him harmless from any claims made against it with respect to the funds deposited in escrow hereunder.

(g) Notwithstanding Escrow Agent's responsibilities hereunder, Escrow Agent shall be entitled to represent SELLER in connection with any and all matters arising in connection with or related to this contract, the escrow deposit, and the transactions contemplated hereby, including, without limitation, any litigation arising in connection therewith.

Section 16.25 Entire Agreement. All understandings and agreements between the parties prior to the date hereof are merged herein. This Agreement fully and completely expresses the parties' agreement. This Agreement, together with the Exhibits hereto, contains all of the promises, agreements, conditions, inducements and understandings between the SELLER and PURCHASER concerning the Yonkers Public School 19 (PS 19) Parcel project and there are no promises, agreements, conditions, inducements or understandings, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

Section 16.26 Effectiveness. This Agreement shall not be binding or effective until executed and delivered by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

CITY OF YONKERS

By: _____
Name: Mike Spano
Title: Mayor

[Insert Developer's Name]

By: _____
Name:
Title:

Agreed and accepted:

By: _____

Acknowledgments

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, 201_, before me, the undersigned, a Notary Public in and for said State, personally appeared Mike Spano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK }
 } s.s.:
COUNTY OF WESTCHESTER }

On _____, 201_ , before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

**LIST OF EXHIBITS TO BE ATTACHED HERETO AND MADE A PART
HEREOF:**

Schedule A: Metes and bounds description of the parcel comprising the Yonkers Public School 19 (PS 19) Parcel, and metes and bounds description of the whole.

Schedule B: Metes and bounds description of Dedicated Improvements described in Section 2.1.

Exhibit A: Conceptual Development Plan describing Improvements set forth in Section 2.1 and defined in Section 5.1.

Exhibit B: Intentionally Omitted.

Exhibit C: Preliminary Development Plan defined in Section 5.2 which includes

- (i) a list of drawings prepared by the Architect**
- (ii) preliminary construction schedule**
- (iii) pro forma construction budget**

Exhibit D: Affirmative Action Document

EXHIBIT D

EQUAL OPPORTUNITY PROVISIONS and Affirmative Actions Requirements

Section 1.1 State Requirements. Purchaser agrees to incorporate or cause to be incorporated into any and every construction contract or other contract relating to the Phase II Purchaser Improvements, or any part thereof; the following provisions altered only to reflect the proper identity of each party:

(a) The contractor will not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, age, sex, marital status or disability, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability. Such action shall be taken with reference, but not be limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation and selection for training or retraining, including apprenticeship and on-the-job training.

(b) Contractor will send to each labor union or representative of workers with which it has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Division of Human Rights, advising such labor union or representative of Purchaser agreement under paragraphs (a) through (h) of this Section (hereinafter called non-discrimination clauses), and further advising such labor union or representative of Purchaser commitments under Section 202 of federal Executive Order 11246 of September 24, 1965. If Purchaser was directed to do so by the City as part of the bid or negotiation of this Agreement, Purchaser shall request such labor union or representative to furnish it with a written statement that such labor union or representative will not discriminate because of race, religion, creed, color, national origin, age, sex, marital status or disability, and that such labor union or representative either will affirmatively cooperate within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under this Agreement shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request, that it furnish such a statement, Purchaser shall promptly notify the State Division of Human Rights of such failure or refusal.

(c) Contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substance of the provisions of paragraphs (a) and (b) and such provisions of the State's laws against discrimination as the State Division of Human Rights shall determine.

(d) Contractor will state in all solicitations or advertisements for employees placed by or on behalf of Purchaser, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, religion, creed, color, national origin, age, sex, marital status or disability.

(e) Contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to its books, records and accounts by the State Division of Human Rights, the Attorney General, City, Commissioner of Housing and Community Renewal and the Industrial Commissioner for purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law. Purchaser also shall comply with all provisions of federal Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor. Purchaser will furnish all information and reports required by federal Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor or the Secretary of Housing and Urban Development pursuant thereto, and will permit access to contractors' books, records and accounts by the Secretary of Housing and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(f) Any contract, including this Agreement, may be forthwith canceled, terminated or suspended, in whole or in part, by the City upon the basis of a finding made by the State Division of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State or housing authority, or an urban renewal agency, or contracts requiring the approval of the Commissioner of Housing and Community Review, or (under and subject to federal Executive Order 11246) federally assisted construction contracts or projects, until it has satisfied the State Division of Human Rights [and/or the Secretary of Labor or the Secretary of Housing and Urban Development) that it has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Division of Human Rights after conciliation efforts by the Division have failed to achieve compliance with these non-discrimination clauses after a verified compliance has been filed with the Division, notice thereof has been given to the contractor and an opportunity has been afforded the Contractor to be heard publicly in accordance with the procedures of the Division. Such sanctions may be imposed and remedies invoked independently of or in addition to sanctions and remedies otherwise provided by law.

(g) If any contract, including this Agreement, is canceled or terminated under paragraph (f), in addition to other rights of the City provided in this Agreement upon its

breach by the contractor, the contractor will hold the City harmless against any additional expenses or costs incurred by the City in completing the work or in purchasing the services, materials, equipment or supplies contemplated by this Agreement, and the City may withhold payments from the contractor in an amount sufficient for this purpose and recourse may be had against the surety on the performance bond if necessary.

(h) Purchaser will, as aforesaid, include the provisions of clauses (a) through (g) in every subcontract or purchase order, and shall require and cause the contractor to do so, in such a manner that such provisions will be binding upon each subcontractor or vendor as to operations to be performed within the State of New York. Purchaser will take such action in enforcing such subcontract or purchase order as the City may direct, including sanctions or remedies for non-compliance. If Purchaser or the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the City, Purchaser shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

Section 1.2 Additional State Provisions. As required by Section 220-e of the New York State Labor Law, Purchaser agrees:

(a) That in the hiring of employees for the performance of work under this or any subcontract hereunder, no Contractor, Subcontractor, nor any person acting on behalf of such Contractor, or Subcontractor shall by reasons of race, religion, creed, color, disability, sex or national origin, discriminate against any citizen of the State of New York who is qualified and available to perform to work to which the employment relates.

(b) That no Contractor, Subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this Agreement on account of race, religion, creed, color, disability, sex or national origin.

(c) That there may be deducted from the amount payable to the Contractor by the City under this Agreement a penalty of five (\$5.00) dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of this Agreement; and

(d) That this Agreement may be canceled or terminated by the City and all monies due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this Section 1.2 of this Exhibit.

(e) The foregoing provisions of this Section 1.2 shall be limited to operations performed within the territorial limits of the State of New York.

Section 1.3 Advertising. During construction and thereafter Purchaser agrees to include in all advertising for the sale of or rental of residential dwelling units or commercial space in the Phase I Purchaser Improvements a statement to the effect (i) that the Phase I Purchaser

Improvements are open to all persons without discrimination on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status or sexual orientation, and (ii) that there shall be no discrimination in public access and use of the Phase I Project to the extent that is open to the public.

Section 1.4 Federal Requirements. In addition to and not in limitation of the foregoing requirements of this Exhibit, Purchaser, for itself; its successors and assigns, hereby covenants and agrees that:

(a) It will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Purchaser will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Purchaser agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause.

(b) Purchaser will, in all solicitations or advertisements for employees placed by or on behalf of Purchaser, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) Purchaser will send to each labor union or representative of workers with which Purchaser has a collective bargaining agreement or other contract or understanding a notice, to be provided advising the labor union or workers_ representative of Purchaser_ commitments under Section 202 of the Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and shall post copies of the order in conspicuous places available to employees and applicants for employment.

(d) Purchaser will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules and regulations and relevant orders of the Secretary of Labor.

(e) Purchaser will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations and orders of the Secretary of Housing and Urban Development pursuant thereto, and will permit access to Purchaser_ books, records, and accounts by the City, the Secretary of Housing and Urban Development, and the Secretary of Labor for purposes of investigations to ascertain compliance with such rules, regulations and orders.

(f) In the event of Purchaser_ non-compliance with the non-discrimination clauses of this Section, or with any of the said rules, regulations or orders, this Agreement may be canceled, terminated or suspended in whole or in part and Purchaser may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in said Executive Order, or by rules, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(g) Purchaser will include the provisions of Paragraphs (a) through (g) of this Section in every contract or purchase order, and will require the inclusion of these provisions in every subcontract entered into by any of its contractors, unless exempted by the rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each such contractor, subcontractor or vendor, as the case may be. Purchaser will take such action with respect to any construction contract, subcontract or purchase order as the City or the Department of Housing and Urban Development may direct as a means of enforcing such provisions, including sanctions for non-compliance, provided, however, that in the event Purchaser becomes involved in, or threatened with, litigation with a subcontractor or vendor as a result of such direction by the City or the Department of Housing and Urban Development, Purchaser may request the United States to enter into such litigation to protect the interests of the United States. For the purpose of including such provisions in any construction contract, subcontract or purchase order, as required hereby, the first three lines of this Section shall be changed to read "During the performance of this Contract, the Contractor agrees as follows: and the term "Purchaser" shall be changed to "Contractors."

Section 1.5 City Requirements. In addition to the foregoing requirements of this Article, Purchaser, its successors and assigns shall, in performing its responsibilities as redeveloper under this Agreement, comply with the following:

The requirements set forth in Chapter 13 of Article VIII of the Code of the City of Yonkers, Minority-and-Women Owned Business Inclusion [added 12-9-2003] by L.L. No. 8-2003.